IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

MACA.No. 1132 OF 2005()

OPMV.3345/2000 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

APPELLANT/PETITIONER:

SHAMSHAD BASHEER AHAMMED,
W/O. BASHEER AHAMMED, 4TH BLOCK, SITE NO.170,
P.O. KATTIPALLA, MANGALORE TALUK, KARNATAKA STATE.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS: RESPONDENTS:
---

1. MUSTHAQ AHAMMED, S/O. ABDUL KHADER,
NEAR SERVICE BUS STAND, SURATHEEL P.O., KARNATAKA.

2. BHASHEER AHAMMED,
TAJ FISH, MANSION, 4TH BLOCK, SITE NO.170,
KATTIPALLA P.O., MANGALORE TALUK, KARNATAKA STATE.

3. UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, MANGALORE.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

M.A.C.A. NO. 1132 OF 2005

DATED THIS, THE 27TH DAY OF FEBRUARY, 2007.

J U D G M E N T

Raman, J.

Petitioner in O.P. (M.V.) NO. 3345/2005 on the files of the Motor Accidents Claims Tribunal, Thrissur, is the appellant herein. According to her, on 3.4.2000, while she was travelling in a maruthi van, it hit against an ambassador car, as a result of which she sustained injuries. The Tribunal found that driver of the maruthi van was negligent in driving the vehicle and the appellant is entitled for a reasonable compensation. There was a valid policy of insurance with the third respondent. Though the appellant claimed an amount of Rs. 2,04, 500/- as compensation under various heads, the Tribunal awarded an amount of Rs. 50,960/- in all with 6% interest per annum. Dissatisfied with the compensation awarded and claiming further enhancement, this appeal is filed.

2. According to the appellant, a certificate to prove permanent disability was produced and marked as Ext.A17, as per which 12%

disability was assessed by the doctor. But the Tribunal, without assigning any reason, fixed the disability to 3%. The average monthly income of the appellant was fixed as Rs.2,000/- and adopting multiplier of 18, an amount of Rs.12,960/- was awarded as compensation for continuing permanent disability, which according to the appellant, is too low. In this connection, it has to be noticed that the appellant has sustained a compound fracture medial malleolus left, multiple abrasion over the face and multiple bodily injuries. She was only 25 years of age at the time of accident. An operation was also performed.. When a certificate of the attending doctor assessing disability was produced and marked in the case and in the absence of any contra evidence or dispute regarding the same, there was no reason to discard such evidence. At any rate, in this case, the Tribunal did not give any reason for not awarding compensation based on the disability assessed by the doctor, but simply reduced the same to 3% without assigning any reason. Therefore, the finding of the court below was not correct in fixing the compensation.

3. In the facts and circumstances, 12% disability as assessed by the doctor has to be taken for computing the compensation under this head. Accordingly, we fix an amount of Rs. 51,840/- as compensation payable under this head. Since an amount of Rs. 12,960/- was already awarded, the

appellant will be entitled to an amount of Rs.38,880/- under this head.

4. As regards the future medical expenses, it was the specific contention of the appellant that a further surgery is required to be performed for removing the implants and an amount of Rs. 7,000/- is claimed. No amount is awarded by the Tribunal. Taking note of the fact that the appellant has suffered serious injuries and underwent an operation, the claim made may not be totally rejected. We fix an amount of Rs. 5,000/- as compensation payable towards future medical expenses.

5. In the result, the appellant will be entitled for an amount of Rs. 43,880/- (Forty three thousand eight hundred and eighty) with interest at 6% per annum from the date of petition till realization, over and above the amount already awarded.

The appeal is allowed as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-